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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-323

THEODORE L. ANDERSON AND DORA C. ANDERSON,
Petitioners,

vs.

THE CITY OF DE KALB, AN ILLINOIS MUNICIPAL CORPORATION, THE SALVATION ARMY, AN ILLINOIS CORPORATION, DOING BUSINESS UNDER THE NAME OF THE RED SHIELD STORE, AND UNKNOWN OWNERS,
Respondents.

CERTIORARI TO THE APPELLATE COURT
OF ILLINOIS, SECOND DISTRICT.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

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OF ILLINOIS, SECOND DISTRICT.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

To the Honorable Justices of the Supreme Court of the United States:

(a) Your petitioners, Theodore L. Anderson and Dora C. Anderson, citizens and residents of the City of De Kalb in the County of De Kalb and State of Illinois, hereby petition the Honorable Supreme Court of the United States for the issuance of its writ of certiorari to the Honorable Appellate Court of Illinois, Second Judicial District (First Division), in order to

review its final judgment and opinion in the case of *The City of De Kalb, Plaintiff-Appellee,* v. *Theodore L. Anderson et al., Defendants-Appellants, No. 75-516 in that court,* officially reported in 43 Ill. App. 3d 915 and unofficially reported in 357 N. E. 2d 837 and 2 Ill. Dec. 617, a true and correct photocopy of which official report is hereto appended. The opinion of the trial court, The Circuit Court of the Sixteenth Judicial Circuit of Illinois in and for De Kalb County, not reported for publication but certified by that Court's shorthand reporter (Record, Report of Proceedings, pages 5-7) and affirmed by the Appellate Court judgment and opinion hereby sought to be reviewed, is necessary to ascertain the grounds of that judgment, and a true and correct photocopy of that opinion is therefore also hereto appended.

(b) The jurisdiction of The Supreme Court of the United States is invoked upon the following grounds:

(i) The judgment sought to be reviewed was dated and entered of record on November 30, 1976.

(ii) A petition for rehearing was timely filed on December 21, 1976, and denied on December 28, 1976. Upon a motion timely filed on February 1, 1977, in the Supreme Court of Illinois (No. 49309) for an extension of time to appeal from the Appellate Court to the Supreme Court, the time was extended to and including March 1, 1977. On that date a petition for appeal as of right or by leave of court was filed in the Supreme Court, and denied on March 31, 1977. A petition for rehearing and motion for reconsideration, etc., was timely filed (by United States postmarked first-class mail pursuant to Illinois Supreme Court Rule 373, making the date of such a post-mark the filing date) on April 21, 1977. On April 22, 1977, the Clerk of the Supreme Court mailed to the respective attorneys herein a notice "that the mandates in the cases listed below [including the present case] were today issued to the appropriate Appellate Court Clerks". On April 28, 1977, the Clerk of the Appellate Court, Second District, mailed to the respective attorneys herein a notice "that the final orders of the Appellate Court for the Second Judicial

District of Illinois in the following cases [including the present case] were today forwarded to the appropriate Clerks of the Circuit Courts". On May 18, 1977, the Clerk of the Supreme Court mailed to the respective attorneys herein a letter stating, "The Supreme Court today made the following announcement concerning [the present case]: 'The motion by petitioners for reconsideration of the order denying petition for leave to appeal and for other relief is denied.' ".

(iii) The statutory provision which the present petitioners believe confers on The Supreme Court of the United States jurisdiction to review the substantive merits of the judgment in question, assuming jurisdiction over the subject matter in the Circuit, Appellate, and Supreme Courts of Illinois, is *United States Code, Title 28 (Judiciary and Judicial Procedure), Section 1257 (State Courts; appeal; certiorari),* which provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * *
>
> (3) By writ of certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

By pleadings, proofs, motions, and briefs, as hereinafter more specifically stated and shown in the record, the present petitioners have specially set up and claimed, and have been judicially denied, titles, rights, privileges, and immunities under the Constitution and statutes of the United States.

(c) The first federal question arises under the United States Constitution's guarantees of substantive and procedural due process of law and equal protection of the laws at the inception of the case upon the pleadings. Are those guarantees fulfilled where, under Illinois Municipal Code, § 11-11-1 (see Appendix), a municipal corporation's (City of De Kalb's) Petition for Condemnation (Record C2-4) alleges, besides the existence of the

municipality (paragraph 1) and the statute (paragraph 2), the legal description of the real property sought to be condemned (paragraph 5), the names of the parties interested therein as owners, but that of only one of two corporate tenants in open possession (paragraph 6), and inability to agree upon just compensation (paragraph 4), only (paragraph 3) that

> The real property hereinafter described and sought to be acquired by the petitioner is necessary, convenient and useful for the rehabilitation or redevelopment of that area within the corporate limits of the City of De Kalb designated as a blighted area because of location, physical condition of structures, land use, environmental influences, and social, cultural and economic conditions. That blighted area is the subject of the 'De Kalb Urban Renewal Project Ill. A-5', approved by the City Council of petitioner as Resolution R-71-28.;

without attaching a copy of the Resolution, quoting therefrom, or even professing to incorporate it by reference into the petition (see Ill. Rev. Stat., Ch. 110, §§ 33 and 36, and Illinois Supreme Court Rule 134; Appendix; and defendants Andersons' Amendment to Motion to Dismiss Petition (Record C30-31), or in any other way identifying the allegedly "blighted area", or alleging that the property sought to be (and now) condemned is included within it, or that the area is "of not less in the aggregate than 2 acres", and "has been designated by ordinance or resolution as an integrated project for rehabilitation or redevelopment"? Resolution 71-28 was first brought to the attention of the Circuit Court by defendants Andersons' Second Amendment to Motion to Dismiss Petition as "Exhibit A" and described the allegedly "blighted" urban renewal area as

> bounded by Seventh Street on the east, Grove Street on the south, Locust Street on the north, and two blocks westerly of First Street on West Lincoln Highway in the City of De Kalb, State of Illinois.

Another federal question is the application and effect of U. S. Code, Title 42 (The Public Health and Welfare), Chapter 8A,

Subchapter II (Slum Clearance and Urban Renewal), § 1460 (Definitions);

* * * * *

> Notwithstanding any other provision of this subchapter, (A) no contract shall be entered into for any loan or capital grant under this subchapter for any project which provides for demolition and removal of buildings and improvements unless the Secretary [of the Department of Housing and Urban Development] determines that the objectives of the urban renewal plan could not be achieved through rehabilitation of the project area, * * *.

A third federal question (or a couple of them) arose just 8 days before oral argument of this case in the Appellate Court of Illinois, Second District, on September 16, 1976. By motion filed there on September 8th by Attorney Anderson he related how in re-examining Municipal Code, "Sections 11-76-1 through 11-76-3", referred to in the City's Section 11-11-1, he fortuitously discovered Division 74.2 (Appendix), the end of which is separated from Section 11-76-1 by the thickness of one page. He asked time for both sides to investigate the effect on this case of Division 74.2, "added" to Division 11 more than 4 years before this case was filed, but was denied. The considerable advantages for commercial condemnees in that then "new" Division, and the denial of them so far to defendants Anderson in this case, were urged in the only remaining oral argument, but were ignored by the Appellate Court in its opinion, and since by the Supreme Court of Illinois, and now by the Circuit Court (without opinion) in the companion case of *The City of De Kalb* v. *Nehring Electrical Works, Inc.*, for condemnation of a factory building, now again pending on appeal in the Appellate Court of Illinois, Second District. Are there in these two cases violations of substantive or procedural due process of law or equal protection of the laws?

(d) See Appendix.

(e) This action was instituted under Illinois Municipal Code, Section 11-11-1, on October 12, 1971, more than 4 years after enactment of Division 74.2, by the City of De Kalb, Illinois,

petitioner sometimes called "plaintiff", against the present petitioners for certiorari and others, called defendants, to condemn in eminent domain present petitioners' two-story and basement brick retail store building in the "downtown" central business district of the City, allegedly for the purpose of "rehabilitation or redevelopment of that area within the corporate limits of the City of De Kalb", but not in any way identified in the Petition for Condemnation, "designated as a blighted area because of location, physical condition of structures, land use, environmental influences, and social, cultural, and economic conditions, [which] blighted area is the subject of the 'De Kalb Urban Renewal Project Ill. A-5', approved by the City Council of petitioner as Resolution R-71-28", neither attached, incorporated by reference, nor quoted in the Petition for Condemnation (Illinois Revised Statutes, Chapter 110, §§ 33 and 36, and Illinois Supreme Court Rule 134; Record C30-31). A copy of the Resolution was first introduced into the case as "Exhibit A" of defendants Andersons' Amendment to Motion as Amended to Dismiss Petition for Condemnation (Record C59-61) and shows the so-called "urban renewal area" to be identified only as "the area bounded by Seventh Street on the east, Grove Street on the south, Locust Street on the north, and two blocks westerly of First Street on West Lincoln Highway in the City of De Kalb, State of Illinois". There is good reason in the evidence, as well as on the face of it, to believe that the true underlying purpose of this and all companion actions is not to "rehabilitate or redevelop" these twelve city blocks plus the uncertain two blocks on the west (as the Appellate Court too easily accepted) but rather to pick around therein as the City might choose, largely for additional public automobile parking in the "downtown" central business district.

Illinois Municipal Code, Section 11-11-1 (Appendix), refers to definitions of "blighted or slum area" and "conservation area" and defines "blighted or slum area" as set out in the Appendix. The Petition for Condemnation does not allege those factors or

any combination of them, nor an area of not less than 2 acres, nor designation as an integrated project for rehabilitation or redevelopment, nor does it identify the area, except as within the City, nor allege that the real property sought to be condemned is within it.

(f) The questions were raised on the pleadings in both the Circuit and Appellate Courts and the pleadings denied, except the third question, which was raised as stated in (c) and ignored by the Appellate Court.

(g) Present petitioners for certiorari have long contended in both the Circuit and Appellate Courts that because this action is purely statutory and neither Division 11 nor Division 74.2 was followed, even nearly, the Petition for Condemnation failed to confer jurisdiction of the subject matter upon the Circuit Court, and so not on the Appellate Court on appeal

(h) The above facts constitute argument.

(i) Copies of the opinions are attached.

(j) The Office of the Clerk of the Appellate Court advises petitioners that there is no judgment separate from the opinion, and no order on rehearing other than the plain announcement of denial.

Respectfully submitted,

THEODORE L. ANDERSON,
DORA C. ANDERSON, *Pro Se*,
239 West Locust Street,
De Kalb, Illinois 60115,
Telephone 815/758-8392.

APPENDIX A.

No. 75-516

UNITED STATES OF AMERICA.

STATE OF ILLINOIS
APPELLATE COURT } ss:
SECOND DISTRICT

At a session of the Appellate Court, begun and held at Elgin, on the 1st day of December, in the year of our Lord one thousand nine hundred and seventy five, within and for the Second District of Illinois:

Present—HONORABLE WILLIAM L. GUILD, *Presiding Justice*
HONORABLE THOMAS J. MORAN, *Justice*
HONORABLE GLENN K. SEIDENFELD, *Justice*
LOREN A. STROTZ, *Clerk*
WILLIAM A. KLUSAK, *Sheriff*

BE IT REMEMBERED, that afterward, to wit: On November 30, 1976 the Opinion of the Court was filed in the Clerk's office of said Court, in the words and figures following, viz:

No. 75-516

IN THE APPELLATE COURT OF ILLINOIS,
Second District, First Division.

THE CITY OF DE KALB, a Municipal Corporation, *Plaintiff-Appellee,* *vs.* THEODORE L. ANDERSON, DORA C. ANDERSON, et al., *Defendants-Appellants.*	Appeal from the 16th Judicial Circuit, DeKalb County, Illinois.

MR. PRESIDING JUSTICE GUILD delivered the opinion of the court:

On October 12, 1971 the City of DeKalb filed its complaint for the condemnation of the North 30 feet of Lot 51 in County Clerk's Assessment Subdivision of Block 12 of the original town of DeKalb. The property is owned by Theodore L. Anderson and Dora C. Anderson, his sister. It is improved by a two story brick building erected in either 1909 or 1910. On November 5, 1971 the defendants filed an appearance and jury demand. On April 14, 1972 the defendants filed a traverse and a motion to dismiss. On April 28, 1972 amendments to the traverse and a motion to dismiss were filed and on May 19, 1972 defendants filed a motion for judgment on the pleadings as amended, or for summary judgment. The motions were denied on June 1, 1972. On June 1, 1972 a hearing was held on the traverse and the motion to dismiss and the motion for summary judgment. These three motions were dismissed on that day and the matter was set for jury trial. The trial was held on July 10, 1972 and a jury returned a verdict finding just compensation to be $45,000. The funds were deposited with the DeKalb County Treasurer. On August 9, 1972 plaintiff filed a post-trial motion which was never called upon for hearing. Defendants subsequently filed a motion for "post-trial relief from verdict of judgment" and this was set for September 21, 1972 at which date they amended their post-trial motion. On that date the post-trial motion was denied and on October 18, 1972 defendants filed a "motion to vacate order entered September 21, 1972." On November 22, 1972 the defendants again filed a petition for leave to appeal from the July 10, 1972 judgment and order denying the amended post-trial motion. On December 12, 1972 this was denied and on January 16, 1973 the court denied defendants' petition for rehearing. Subsequent to that date the defendants have been in court approximately 17 times for various amendments and motions. Finally, three years later, on August 21, 1975, the defendants filed a notice of appeal

The condemnation of defendants property is a part of the acquisition by the City of DeKalb of approximately 12 blocks in

area, being 2 blocks wide and 6 blocks long. This acquisition was authorized by various ordinances of the City of DeKalb under the provisions of section 11-11-1 of the Illinois Municipal Code (Ill. Rev. Stat. (1971), ch. 24, ¶ 11-11-1).

The pro se brief of the defendant is extremely difficult to follow. Arguments are presented, theoretically, on eight issues in their brief. However, they argue only one, that the defendants' property is not "slum or blighted." The defendants conclude that the City of DeKalb lacks the right and power to condemn defendants' real property. At no time do the defendants argue that the amount awarded under the condemnation proceeding is insufficient. The issue of just compensation, therefore, is specifically waived.

Indirectly, it would appear that defendants' argument may be that the City of DeKalb abused its power in condemning defendants' property. Section 11-11-1 of the Illinois Municipal Code gives the City of DeKalb the power:

> "to acquire by purchase, condemnation or otherwise any improved or unimproved real property the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area or any conservation area as defined in Section 3 of the Urban Community Conservation Act . . ."

The predecessor of this specific section has been upheld by the Illinois Supreme Court in *People* v. *City of Chicago* (1946), 394 Ill. 477, 68 N. E. 2d 761 which was nearly identical language to the present act. The existing section 11-11-1 refers to the Urban Community Conservation Act found in chapter 67½, section 91.8 (Ill. Rev. Stat. 19....., ch. 67½, ¶ 91.8). That Act, too, has been specifically held constitutional. *People ex rel. Gutknecht* v. *Chicago* (1954), 3 Ill. 2d 539, 121 N. E. 2d 791. The power of domain and the power of eminent domain is inherent in every government and may be delegated by the legislature to a public body such as the City of DeKalb. Absent abuse of discretion on the part of the planning body, the power to condemn is inherent in a governmental body, such as a municipality.

At the jury trial the City of DeKalb introduced its resolution approving the urban renewal plan and the ordinances passed by the city to condemn specific parcels of property, including defendants' property, under the urban renewal project as necessary, required and needed for such rehabilitation and redevelopment purposes. As the City points out, it is well established that the introduction into evidence of the resolution and the ordinance approving the resolution for condemnation makes a prima facie case. (*City of Chicago* v. *Walker* (1971), 50 Ill. 2d 69, 277 N. E. 2d 129 and *Chicago Land Clearance Commission* v. *Quinn* (1957), 11 Ill. 2d 111, 142 N. E. 2d 60, cert. den. 355 U. S. 856, ... L. Ed. 2d ....., ... S. Ct. .....). In both of these cases the Illinois Supreme Court has held the documents established prima facie case of the authority of the City to acquire the land by eminent domain. As the City points out, it was the duty of defendants to proceed with evidence that there was an abuse of discretion by the City of DeKalb or the City lacked the authority to condemn. The defendants put on no evidence, they merely filed an affidavit stating the defendants' opinions and belief. Nowhere in that affidavit is there any allegation that the City of DeKalb is without authority to condemn. The affidavit, in particular, deals with the structure on defendants' property and their contention that the building is structurally sound and that the area upon which it is located is not a slum or blighted. It did not present any evidence that the City had abused its discretion. The question thus presented is whether the fact that the defendants contend that their property is not in a slum or blighted area is a defense to a condemnation proceedings in an urban renewal project of the nature we find herein. This issue has been determined by the Illinois Supreme Court in *City of Chicago* v. *Barnes* (1964), 30 Ill. 2d 255, 195 N. E. 2d 629, where the Supreme Court stated:

> "There is no merit in the contention. In this kind of case the fact that there may be some sound buildings in the slum and blighted area is no defense to the proceedings. Property may be taken which, standing by itself, is unoffending, for

> the test is based on the condition of the area as a whole." 30 Ill. 2d at 257, 195 N. E. 2d at 631.

In *Berman* v. *Parker* (1954), 348 U. S. 26, 99 L. Ed. 27, 75 S. Ct. 98, the District of Columbia Redevelopment Act from 1945 was attacked on the same ground as raised by the defendants herein. The petitioners there argued that their specific property was not slum or blighted and therefore could not be taken. The Supreme Court stated:

> "Property may of course be taken for this redevelopment which, standing by itself, is innocuous and unoffending . . . it is the need of the area as a whole which Congress and its agencies are evaluating. If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrated plans for redevelopment would suffer greatly. . . . Community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis—lot by lot, building by building." 348 U. S. at 35, 99 L. Ed. at ....., 75 S. Ct. at .....

As stated at the outset of this opinion, it is extremely difficult to follow the arguments of the defendants. We have examined the record nonetheless and find no error. The order of the trial court entering judgment on the verdict of the jury in the sum of $45,000 for the defendants herein is therefore affirmed.

AFFIRMED.

SEIDENFELD J. and MORAN J. concur.

APPENDIX B.

[Letterhead of Appellate Court of Illinois, Second District]

Dec. 28, 1976

The Court Has This Day Entered the Following Order in the Case of:

Gen. No. 75-516

The City of DeKalb, a Municipal Corporation, appellee, v. Theodore L. Anderson, Dora C. Anderson, et al., appellants.

Petition for rehearing denied.

LOREN J. STROTZ
Clerk

Theodore L. Anderson
Reid, Ochsenschlager, Murphy & Hupp
Wm. C. Murphy
Richard L. Horwitz

APPENDIX C.

[Letterhead of Supreme Court of Illinois]

March 31, 1977

Mr. Theodore L. Anderson
Attorney at Law
239 Locust Street
DeKalb, Illinois 60115

No. 49309—The City of DeKalb, a Municipal Corporation, respondent, vs. Theodore L. Anderson, et al., petitioners. Leave to appeal, Appellate Court, Second District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause. Mr. Justice Moran took no part.

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

APPENDIX D.

April 22, 1977

To Attorneys of Record and Parties:

You are hereby notified that the mandates in the cases listed below were today issued to the appropriate Appellate Court Clerks.

CLELL L. WOODS
Clerk of the Supreme Court

* * * * *

No. 49309—The City of De Kalb, a Municipal Corporation, respondent, vs. Theodore L. Anderson, et al., petitioners. Leave to appeal, Appellate Court, Second District.

APPENDIX E.

[Letterhead of Supreme Court of Illinois]

May 18, 1977

Mr. Theodore L. Anderson
239 Locust Street
DeKalb, Illinois 60115

In re: The City of De Kalb, a municipal corporation, respondent, vs. Theodore L. Anderson, et al., petitioners—No. 49309

Dear Mr. Anderson:

The Supreme Court today made the following announcement concerning the above entitled cause:

"The motion by petitioners for reconsideration of the order denying petition for leave to appeal and for other relief is denied."

Very truly yours,

/s/ CLELL L. WOODS
Clerk of the Supreme Court

CLW:cr

cc—Reid, Ochsenschlager, Murphy and Hupp

APPENDIX F.

IN THE CIRCUIT COURT
of DeKalb County, Illinois

The City of DeKalb vs. Theodore L. Anderson, et al.

No. 71 ED 530

COURT'S RULING AT THE HEARING
ON THURSDAY, JUNE 1, 1972.

THE COURT: Very well, the Court will deny Motion for Summary Judgment.

I commented somewhat before and I think perhaps I should say for the record that the mere fact that there is a traverse filed is an inference that there are questions of fact, and, of course, a Motion for Summary Judgment must be premised with the idea that there are no questions of fact and that the Court would decide the case solely on law. In viewing the petition, the Motion for Summary Judgment, the evidence that has been placed into the record here this morning by the City, it would appear that there is a question of fact, and accordingly I cannot grant the Motion for Summary Judgment.

Now, the other motions, of course, are attacking the pleadings and I don't think that there has been sufficient showing here that the case should be decided either on the Motion to Dismiss or on the motion on the pleadings. I will have to deny those.

The traverse, now, we have heard evidence on the traverse, and the record speaks for itself. I think that I would have to find—I don't know exactly what the finding, Mr. Murphy, will be on the traverse.

MR. MURPHY: Just deny the traverse, your Honor, if you're going to hold with me.

THE COURT: I guess that would be just deny the traverse. I believe that I have ruled, then, on all the motions and the traverse.

* * * * *

I, Ronald R. Blickem, Official Reporter for the Circuit Court of DeKalb County, Illinois, do hereby certify that the foregoing and attached is a true, correct and complete transcript of the Court's ruling at the hearing aforesaid as the same appears from stenographic notes so taken by me as such Official Reporter.

Dated: June 28, 1972.

/s/ RONALD R. BLICKEM
Official Reporter

APPENDIX G.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RESOLUTIONS, AND REGULATIONS.

Constitution of the United States, Amendment V

No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

ILLINOIS REVISED STATUTES, CHAPTER 24, CITIES AND VILLAGES
ILLINOIS MUNICIPAL CODE OF 1961

* * * * *

Article 11. Corporate Powers and Functions

* * * * *

Division 11. Urban Rehabilitation

* * * * *

§ 11-11-1. Slums and blighted areas—Rehabilitation or redevelopment

The corporate authorities of each municipality have the following powers: (1) to acquire by purchase, condemnation or otherwise any improved or unimproved real property the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area or any conservation area as defined in Section 3 of the Urban Community Conservation Act; * * *. * * * For the purposes of this section, "blighted or slum area" means any area where buildings or improvements, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, deleterious land uses, or any combination of these factors, are a detriment to public safety, health or morals, and an area of not less in the aggregate than 2 acres has been designated by ordinance or resolution as an integrated project for rehabilitation or redevelopment.

* * * * *

1961, May 29, Laws 1961, p. 576, § 11-11-1. Amended by P.A. 77-656, § 1, effective Aug. 4, 1971 [to insert "or any conservation area as defined in Section 3 of the Urban Community Conservation Act"].

§ 11-11-2. Borrowing—Contributions and gifts—Grants-in-aid

The corporate authorities of each municipality may * * * accept contributions, capital grants, gifts, donations, services or other financial assistance from the United States of America, the Housing and Home Finance Agency, or any other agency or instrumentality, corporate or otherwise, of the United States of America for or in aid of an "Urban Renewal Project" as defined in the Act of Congress approved August 2, 1954, being Public Law 560-83rd Congress, known as the "Housing Act of 1954", and which the municipality is authorized to effectuate, * * *.

* * * * *

1961, May 29, Laws 1961, p. 576, § 11-11-2.

COMMERCIAL BLIGHT AREAS

Division 74.2 Commercial Renewal and Redevelopment Areas [New]

Division 74.2 was added 1967, Aug. 18; Laws 1967, p. 3213

§ 11-74.2-1. Legislative declaration

It is hereby found and declared:

* * * * *

(f) The eradication and elimination of commercial blight areas and the construction of redevelopment projects financed by private capital, with financial assistance from governmental bodies, *in the manner provided in this Division,* are hereby declared to be a public use essential to the public interest. *1961, May 29, Laws 1961, p. 576; § 11-74.2-1 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* * * * [Emphasis supplied.]

§ 11-74.2-2. Definitions

As used in this Act unless the context requires otherwise:

* * * * *

(b) "Commercial blight area" or "blight area" means any area of not less in the aggregate than 2 acres located within the territorial limits of a municipality where commercial buildings or improvements, because of age, dilapidation, obsolescence, overcrowding, lack of ventilation, light, sanitary facilities, adequate utilities, or excessive land coverage, deleterious land use or layout, or any combination of these factors, are detrimental to the public safety, health, morals or welfare.

(c) "Commercial project" means any building or buildings or building addition or other structures to be newly constructed and suitable for use by a commercial enterprise, and includes

the sites and other rights in the land on which such buildings or structures are located.

* * * * *

(e) "Redevelopment area" means the blighted area, of not less in the aggregate than 2 acres, to be developed in accordance with the redevelopment plan. *1961, May 29, Laws 1961, p. 576; § 11-74.2-2 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* * * * [Emphasis added.]

§ 11-74.2-3. Initial study and survey

The corporate authorities of any municipality may by resolution provide for an initial study and survey to determine if the municipality contains any commercial blight areas.

In making the study and survey the corporate authorities shall:

* * * * *

(c) Create a representative Citizens Committee of not less than 9 persons, to be appointed by the chief executive officer of the municipality with the approval of a majority of the municipal council, which committtee shall consist of representatives from among local merchants, owners of commercial real estate, the advertising media, residential property owners associations, human relations commissions, labor organizations and civic groups;

(d) Formulate a proposed commercial redevelopment plan for any blight area, provided that such plan has received the approval and recommendation of a ⅔ majority vote of the members of the Citizens Committee created under paragraph (c) of this Section. *1961, May 29, Laws 1961, p. 576; § 11-74.2-3 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* * * * [Emphasis supplied.]

§ 11-74.2-4. Commercial blight areas—Resolution setting forth boundaries—Notice of hearing

If as a result of their initial study and survey the corporate authorities determine that one or more commercial blight areas exist in the municipality, they may by resolution set forth the boundaries of each commercial blight area and the factors that exist in the blight areas that are detrimental to public health, safety, morals and welfare.

In the same resolution the corporate authorities may provide for a public hearing on commercial blight and may submit proposed redevelopment plans for the blight areas. At least 20 days before the hearing the municipal clerk shall give notice of the hearing by publication at least once in a newspaper of general circulation within the municipality. *1961, May 29, Laws 1961, p. 576; § 11-74.2-4 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* [Emphasis supplied.]

§ 11-74.2-5. Hearing

At the hearing on commercial blight the corporate authorities shall introduce the testimony and evidence that entered into their decision to declare an area a commercial blight area, and shall enter into the record of the proceedings all proposed commercial redevelopment plans received at or prior to the hearing. All interested persons may appear and testify for or against any proposed commercial redevelopment plan. The hearing may be continued from time to time at the discretion of the corporate authorities to allow necessary changes in any proposed plan or to hear or receive additional testimony from interested persons. *1961, May 29, Laws 1961, p. 576; § 11-74.2-5 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* [Emphasis supplied.]

§ 11-74.2-6. Final redevelopment plan—Formulation and publication—Public inspection

At the conclusion of the hearing on commercial blight the corporate authorities shall formulate and publish a final commercial redevelopment plan for the municipality after approval by a ⅔ majority vote of the members of the Citizens Committee, which plan may incorporate any exhibit, plan, proposal, feature, model or testimony resulting from the hearing. The final redevelopment plan shall be made available for inspection by all interested parties. *1961, May 29, Laws 1961, p. 576; § 11-74.2-6 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* [Emphasis supplied.]

§ 11-74.2-7. Review under Administrative Review Act—Municipal action in absence of review

Within 30 days after the publication of a final commercial redevelopment plan, any person aggrieved by the action of the corporate authorities may seek a review of their decision and the redevelopment plan under the "Administrative Review Act". The provisions of that Act and all amendments and modifications thereof and the rules adopted pursuant thereto shall apply to and govern all proceedings for the judicial review of the actions of the corporate authorities and the final commercial redevelopment plan.

If no action is initiated under the Administrative Review Act, or if the court sustains the corporate authorities and the final redevelopment plan as is, or as amended by the court, the corporate authorities may proceed to carry out the final commercial redevelopment plan. *1961, May 29, Laws 1961, p. 576; § 11-74.2-7 added 1967, Aug. 18, Laws 1967, p. 3213, § 1.* [Emphasis supplied.]

§ 11-74.2-8. Powers of corporate authorities

In carrying out a final commercial redevelopment plan the corporate authorities have the power to:

(a) Acquire by purchase, gift, condemnation or otherwise *as provided in this Division* the fee simple title to all or any part of the real property in any redevelopment area; if the property is to be obtained by condemnation, such power of condemnation may be exercised only when at least 85% of the land located within the boundaries of each plan has been acquired previously by the corporate authorities or private organizations pursuant to the implementation of the plan through good faith negotiations and such negotiations are unsuccessful in acquiring the remaining land;

* * * * *

(h) Borrow money, apply for and accept advances, loans, grants, contributions, gifts, services, or other financial assistance, from the United States of America or any agency or instrumentality thereof, the State, county, municipality or other public body or from any source, public or private, for or in aid of any of the purposes of the final redevelopment plan, and to secure the payment of any loans or advances by the issuance of revenue bonds and by the pledge of any loan, grant or contribution, or parts thereof, or the contracts therefor, to be received from the United States of America or any agency or instrumentality thereof, and to enter into and carry out contracts in connection therewith;

* * * * *

1961, May 29, Laws 1961, p. 576; § 11-74.2-8 added 1967, Aug. 18, Laws 1967, p. 3213, § 1. * * * [Emphasis supplied.]

§ 11-74.2-9. Acquisition of property—Taxation of property in final redevelopment plan

In exercising the power to acquire real estate as provided in this Division, the corporate authorities may proceed by gift, purchase or condemnation to acquire the fee simple title to all real property lying within a redevelopment area, including easements and reversionary interests in the streets, alleys and other public places lying within such area; if the property is to be obtained by condemnation, such power of condemnation may be exercised only when at least 85% of the land located within the boundaries of each plan has been acquired previously by the corporate authorities or private organizations pursuant to the implementation of the plan through good faith negotiations and such negotiations are unsuccessful in acquiring the remaining land. * * * No power of condemnation shall be used to acquire a site for a commercial project as defined in paragraph (c) of Section 11-74.2-2.

* * * * *

1961, May 29, Laws 1961, p. 576; § 11-74.2-9 added 1967, Aug. 18, Laws 1967, p. 3213, § 1. [P. A. 78-1155, § 1, effective October 1, 1974, substituted "85%" for "80%" and added the last sentence to the first paragraph.]

* * * * *

APPENDIX H.

IN THE APPELLATE COURT OF ILLINOIS,
Second District

THE CITY OF DEKALB, Plaintiff-Appellant *vs.*
THEODORE ANDERSON *et al.*, Defendants-Appellees.

22 Ill. App. 3d 40; 316 N. E. 2d 653
(No. 73-137; Appeal dismissed.)

September 13, 1974.

* * * * *

APPEAL from the Circuit Court of DeKalb County; the Hon. CARL SWANSON, Judge, presiding.

Reid, Ochsenschlager, Murphy & Hupp, of Aurora (John Lamont, of counsel), for appellant.

Theodore L. Anderson, *pro se*.

MR. PRESIDING JUSTICE THOMAS J. MORAN delivered the opinion of the court:

Plaintiff appeals from an order which vacated a former order denying defendants' post-trial motion. The plaintiff contends that because the appealed order was entered more than 30 days after the denial of defendants' post-trial motion, the circuit court was without jurisdiction. Defendants counter that because the plaintiff's post-trial motion seeking a new trial is still pending, this appeal should be dismissed for lack of a final, appealable order. While several contentions are raised, we find it necessary to resolve only the question of whether or not the trial court retained jurisdiction to enter the order appealed.

This litigation was commenced when plaintiff filed a petition to condemn certain real property owned in joint tenancy by the defendants. On July 10, 1972, the court entered judgment on the jury's verdict which awarded $45,000 as just compensation for the taking of defendants' property. Plaintiff and defendants filed post-trial motions on August 9, 1972. That same day, plaintiff sought and received authorization and direction from the court to deposit with the DeKalb County treasurer, for the benefit of the defendants, the amount of the judgment plus any interest and costs. On September 21, 1972, the court denied defendants' post-trial motion. Twenty-seven days later, defendants moved to vacate this order or in the alternative to be afforded relief under Supreme Court Rule 304.[1]

On November 22, 1972, pursuant to Supreme Court Rule 303(e),[2] defendants filed a petition for leave to appeal wherein they informed this court that plaintiff's post-trial motion was still pending in the trial court and that although they believed the September 21, 1972, order was not appealable, they were unsure of the law. The uncertainty, the petition stated, was due to the fact that the order which denied their post-trial motion, did not deny plaintiff's post-trial motion; that it was a determination affecting fewer than all of the parties or claims; and that the trial court's order did not include an express finding "that there was no just reason for delaying enforcement or appeal" as provided under Supreme Court Rule 304(a). Upon these facts and out of concern for protecting their right of appeal, defendants requested this court to either grant them leave to appeal or hold the petition in abeyance until final disposition

1. Supreme Court Rule 304 (Ill. Rev. Stat. 1971, ch. 110A, § 304) permits an appeal from a judgment that does not dispose of an entire proceeding only in instances where the trial court makes an express written finding that there is no reason for delaying enforcement or appeal.

2. Supreme Court Rule 303(e) (Ill. Rev. Stat. 1971, ch. 110A, § 303(e)) grants additional 30 days from the expiration of the initial 30 days allowed for the filing of a notice of appeal. The granting of a later appeal is discretionary with the reviewing court upon a showing of a reasonable excuse for failure to file a timely notice in the first instance.

of plaintiff's pending motion in the trial court as suggested in *Ariola* v. *Nigro*, 13 Ill. 2d 200 (1958).

Plaintiff filed objections to defendants' petition but gave no indication that it had waived or abandoned its post-trial motion or that it had deposited the condemnation award with the DeKalb County treasurer. Aside from matters not relevant here, plaintiff's only objection to defendants being allowed to appeal was that the "time for filing the Notice of Appeal expired on November 20, 1972, and this Court has no more jurisdiction to proceed in the matter." This objection was determined to be without foundation.[3] Based, therefore, on the uncontradicted assertion that plaintiff's post-trial motion was pending at the time of defendants' attempted appeal, we, for lack of a final appealable order, denied defendants' petition for leave to appeal. Subsequent to our action, the trial court, on March 13, 1973, allowed defendants' motion to vacate and it is from this order that plaintiff now appeals.

Plaintiff contends that its own post-trial motion was abandoned in open court at the September 21 hearing on defendants' post-trial motion. This assertion, however, is substantiated by neither the order of the 21st nor by the record; it is apparent only in plaintiff's brief.

Plaintiff, relying upon *County of Cook* v. *Malysa*, 39 Ill. 2d 376 (1968), argues that by depositing the condemnation award

3. Section 1.11 of the Construction of Statutes Act (Ill. Rev. Stat. 1971, ch. 131, § 1.11) states, "The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday * * *." The 30th day after the entry of the September 21, 1972, order (which disposed of defendants' post-trial motion) fell on Saturday, October 21. Accordingly, we exclude that day, Sunday (October 22) and Monday (October 23, Veterans' Day). Therefore defendants' notice of appeal was required to be filed no later than Tuesday, October 24, 1972, per Supreme Court Rule 303(a) (Ill. Rev. Stat. 1971, ch. 110A, § 303(a).) Granting an additional thirty days after the expiration of the original 30 days (per Supreme Court Rule 303(e), the 30th day of the extension period fell on Wednesday, November 23, 1972. Defendants' petition, therefore, was filed a day early.

with the county treasurer it expressly waived any claimed error in the proceedings, that its pending post-trial motion thus became moot, and the September 21, 1972 order was rendered final and appealable.

1. *Malysa* holds that by depositing the condemnation award with the county treasurer for the benefit of the condemnee, the condemnor waived any right to attack the award because of claimed errors in the condemnation proceeding and the question of condemnor's right to appeal upon such grounds became moot. It does not hold that payment of the award terminates either the jurisdiction of the trial court or the rights of the other parties. Under plaintiff's interpretation of *Malysa*, if only its post-trial motion were pending at the time it deposited the condemnation award, the act of payment, rather than the order disposing of the motion, would terminate the trial court's jurisdiction and set the time for the other party to appeal. We find nothing in *Malysa* to support such construction. When the plaintiff deposited the condemnation award, it waived only its rights to attack the judgment. The jurisdiction of the trial court and the rights of the other parties were not affected thereby.

2, 3. Generally, for a period of 30 days after entering a final order, a trial court, for good cause (*People* v. *McCloskey*, 2 Ill. App. 3d 892, 898 (1971) or sua sponte (*Darling* v. *Reinert*, 132 Ill. App. 2d 192, 194 (1971)), may vacate that order. If a post-trial motion is filed within the 30 days, the trial court retains jurisdiction to alter the order. (Ill. Rev. Stat. 1971, ch. 110, § 50(5), § 68.1(3), § 68.3(1).) A court loses jurisdiction when 30 days pass without a post-trial motion being filed (*Fox* v. *Department of Revenue*, 34 Ill. 2d 358, 360-62 (1966); *Brockmeyer* v. *Duncan*, 18 Ill. 2d 502, 505 (1960); *Arrow Ambulance* v. *Davis*, 16 Ill. App. 3d 318, 320 (1974)), when a notice of appeal is filed within 30 days (*City of Chicago* v. *Myers*, 37 Ill. 2d 470, 472 (1967); *Hokin* v. *Hokin*, 102 Ill. App. 2d 205, 217 (1968); *Loehde* v. *Loyola University*, 11 Ill. App. 3d 827 (1973)), when a notice of appeal is filed by the only party who has a post-trial motion pending (*Corwin*

v. *Rheims*, 390 Ill. 205, 214 (1945); *Smith* v. *Glowacki*, 122 Ill. App. 2d 336, 340 (1970)).

A second post-trial motion filed beyond the 30 days by the same party, attacking the same judgment, neither extends the time for the filing of appeal nor continues the jurisdiction of the trial court. *Deckard* v. *Joiner*, 44 Ill. 2d 412 (1970), *cert. denied*, 400 U. S. 941; *In re Estate of Schwarz*, 63 Ill. App. 2d 456 (1965), *app. denied*.

4. The above cases are distinguishable from the instant case in that here, each party had timely filed a post-trial motion attacking the final order of July 10. Under such circumstances, we are of the opinion that until the last timely filed post-trial motion has been passed upon, the court retains complete jurisdiction over the final order under attack to rectify any errors that may have been brought to its attention. Total jurisdiction is essential since the action taken may affect all parties involved. This also seems to be in accord with section 68.1(6) (Ill. Rev. Stat. 1973, ch. 110, § 68.1(6)) which states that the court must rule upon all relief sought in all post-trial motions. Here, because of the pendency of plaintiff's post-trial motion, the trial court's jurisdiction continued permitting it to enter the order of March 13, 1972, which in effect reinstated defendants' post-trial motion. Since plaintiff's notice of appeal was not filed until March 30 (after the reinstatement of defendants' post-trial motion), the doctrine of abandonment is not applicable to plaintiff's pending post-trial motion.

We therefore hold that, until there has been a disposition of the pending post-trial motions, the trial court retains jurisdiction and the time for filing a notice of appeal is "within 30 days after the entry of the order disposing the motion[s]." Supreme Court Rule 303(a); *Conley* v. *Rust*, 12 Ill. App. 3d 26, 28 (1973).

We conclude that the appeal herein is premature and must therefore be dismissed.

Appeal dismissed.

RECHENMACHER, *J.*, concurs.

MR. JUSTICE SEIDENFELD dissenting:

In my view the court below erroneously considered defendants' successive post-trial motion filed after 30 days of the July 10, 1972, judgment order, and therefore the circuit court acted without authority in vacating its September 21, 1972, order denying defendants' original post-trial motion.

The majority opinion agrees that a successive post-trial motion filed beyond the 30 days does not continue the jurisdiction of the trial court (see *Deckard* v. *Joiner* (1970), 44 Ill. 2d 412; *In re Estate of Schwarz* (1965), 63 Ill. App. 2d 456; *Weaver* v. *Bolton* (1965), 61 Ill. App. 2d 98). But it apparently assumes that defendants may properly file or reinstate post-trial motions after 30 days from the July 10 judgment which could otherwise not be considered, due to the fortuitous circumstance that another party has a timely post-trial motion pending. Section 68.1(3) of the Civil Practice Act (Ill. Rev. Stat. 1973, ch. 110, par. 68.1(3)), however, provides that post-trial motions must be filed within 30 days after entry of judgment or within any further time the court may allow within the 30 days or extensions thereof. There is no exception evident to this rule of procedure that because one party has timely filed his post-trial motion, others need not do so. (*Pruitt* v. *Motor Cargo, Inc.* (1961), 30 Ill. App. 2d 222; *Rosenberg* v. *Stern* (1898), 77 Ill. App. 248, *aff'd*, 177 Ill. 437.) When the lower court granted defendants' motion to vacate filed after 30 days of the July 10 judgment, it acted without authority. *Cf. Williams* v. *Deasel* (1974), 19 Ill. App. 3d 353, 355.

Since defendants' October 18, 1972, motion to vacate was not filed in apt time, the appeal is not premature. I agree that the payment of the condemnation award did not for procedural purposes dispose of the City's post-trial motion. Now that the City has appealed, however, its appeal constitutes a formal aban-

donment of its post-trial motion (*Corwin* v. *Rheims* (1945), 390 Ill. 205, 214; *Smith* v. *Glowacki* (1970), 122 Ill. App. 2d 336, 340; *Vogel* v. *Melish* (1962), 37 Ill. App. 2d 471, 473) and introduces finality into the proceedings in the cause below. Because the only order below appealed from, the order of March 13,1973, allowing defendants' motion to vacate, was entered without authority, the judgment of July 10 should be affirmed.

Defendants are not thereby unreasonably precluded from exercising their right to appeal. Defendants sought to preserve their right to appeal by filing a petition under section 303(e) on November 22, 1972, but indicated both in their petition and in their briefs filed in the present appeal that they did not believe there was an appealable order due to the pendency of the City's post-trial motion. In effect, we so ruled by denying their petition. The responsibility is on the party seeking to perfect an appeal to submit a record on appeal that reveals finality in the circuit court proceedings. Had defendants wished to appeal, they needed only to have had the court below dispose of the City's post-trial motion as of record for want of prosecution, mootness or any other appropriate reason. Further, defendants had the right to file a cross-appeal within the time provided by rule from the date of the service on them of the City's notice of appeal. (Ill. Rev. Stat. 1973, ch. 110A, par. 303(a).) Defendants chose not to avail themselves of either route of appeal, but instead persisted in an untimely post-trial motion.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-323

THEODORE L. ANDERSON and DORA C. ANDERSON,

Petitioners,

vs.

THE CITY OF DE KALB, an Illinois Municipal Corporation, THE SALVATION ARMY, an Illinois Corporation, Doing Business Under the Name of THE RED SHIELD STORE, and UNKNOWN OWNERS,

Respondents.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Second District

BRIEF FOR RESPONDENT CITY OF DE KALB IN OPPOSITION

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INTRODUCTION

Petitioners have urged this Court to consider three so-called "federal" questions, but offer no explanation, argument, citation of authorities, or reference to the record to support these supposed questions.

We propose to demonstrate in this brief:

(1) That Petitioners have failed to meet the jurisdictional requirements necessary to a grant of this petition; and

(2) That the decision of the Illinois Appellate Court for the Second District is well considered, and amply supported by the record.

STATEMENT OF THE CASE

This case arises from Respondent City of DeKalb's condemnation of Petitioners' property as part of the City's urban renewal program affecting twelve blocks. (Pet. A. 2) Respondent acquired Petitioners' property under the authority of various ordinances of the city passed under the provisions of Section 11-11-1 of the Illinois Municipal Code. Ch. 24, Ill. Rev. Stat. §11-11-1 (1971) (Pet. A. 3).

The Petition for Condemnation was filed October 12, 1971. On April 14, 1972, Petitioners (defendants below) filed a traverse and a Motion to Dismiss; and on April 28, 1972, filed amendments to the traverse and Motion to Dismiss. (Pet. A. 2) Similarly, Petitioners filed a Motion for Judgment of the pleadings as amended, or for summary judgment. All motions and the traverse were heard and denied on June 1, 1972. (Pet. A. 2) On July 10, 1972, a trial was held and the jury returned a verdict finding just compensation to be Forty-five Thousand Dollars ($45,000.00). Post-trial motions were filed, and properly disposed of by the Trial Court. (Pet. A. 2) Although the disposal of post trial motions normally ends the Trial Court's involvement and

jurisdiction, nevertheless since that time, Petitioners have been before the Trial Court approximately seventeen more times for various amendments and motions prior to the Appellate Court opinion. (Pet. A. 2)

On appeal to the Illinois Appellate Court for the Second District, Petitioners raised several issues, but only argued one. As the Appellate Court observed:

> The pro se brief of the defendant is extremely difficult to follow. Arguments are presented, theoretically, on eight issues in their brief. However, *they argue only one,* that the defendants' property is not "slum or blighted". The defendants conclude that the City of DeKalb lacks the right and power to condemn defendants' real property. At no time do the defendants argue that the amount awarded under the condemnation proceeding is insufficient. The issue of just compensation, therefore, is specifically waived. (emphasis supplied)

(Pet. A. 3) No federal question was properly raised and argued before, or considered by, the Illinois Appellate Court.

Petitioners' Petition for Rehearing before the Appellate Court was denied. (Pet. A. 6) Its Petition for Leave to Appeal before the Illinois Supreme Court was denied (Pet. A. 7), and its Motion for Reconsideration of the order denying the Petition for Leave to Appeal likewise was denied. (Pet. A. 9)

Before this Court, Petitioners apparently raise three points asserting that they are federal questions. First, whether the pleadings in state court violated Petitioners' federal rights (Pet. 3); second, whether Title 42, United States Code, Chapter 8(a), sub-chapter 2, §1460 is applicable, or of any effect whatsoever (Pet. 4); and third, whether Division 74.2 of the Illinois Municipal Code was applicable

rather than Division 11 under which the Respondent City proceeded.

Although Petitioners attempt to raise the above three questions, they fail to brief those questions in their Petition, or to offer any authority, reference to the record, or argument in support of said questions. In fact, their only asserted argument is as follows:

> (g) Present petitioners for certiorari have long contended in both the Circuit and Appellate Courts that because this action is purely statutory and neither Division 11 nor Division 74.2 was followed, even nearly, the Petition for Condemnation failed to confer jurisdiction of the subject matter upon the Circuit Court, and so not on the Appellate Court on appeal.
>
> (h) The above facts constitute argument.

(Pet. 7) Not one case is cited; and not one reference to the record is made.

As the Appellate Court of Illinois twice observed in its opinion:

> The pro se brief of the defendant is extremely difficult to follow.
>
> ••••
>
> As stated at the outset of this opinion, it is extremely difficult to follow the arguments of the defendants.

(Pet. A. 3, 5) Similarly, Petitioner's Petition is difficult to follow. No argument in support of asserted questions is made; no case or statute citations are offered; and no reference to the record is made. To what unknown points of law do Respondents respond?

The burden is on Petitioners to present in their Petition adequate information concerning the record and essential facts. The mere assignment of errors without argument, explanation, reference to the record, or citation of authorities is completely insufficient to comply with this Court's rules, or to invoke this Court's jurisdiction.

ARGUMENT

I. THE PETITION FOR CERTIORARI IS INSUFFICIENT, AND NOT IN COMPLIANCE WITH APPLICABLE SUPREME COURT RULES.

In deciding whether it has jurisdiction in this case, this Court must determine whether a federal question was involved and necessarily passed upon by the State Court. Such determination must rest upon an examination of the record. *Honeyman* v. *Hanan*, 300 U.S. 14, *Appeal Dismissed*, 302 U.S. 375 (1937). The burden is on Petitioners to demonstrate those portions of the record upon which jurisdiction is based. *See*, U.S. Sup. Ct. Rule 23. Because this Court is wary of assuming jurisdiction of a case from State Court unless it is plain that a federal question is necessarily presented, Petitioners must show that this Court has jurisdiction of the case. *Department of Mental Hygiene of California* v. *Kirchner*, 380 U.S. 194 (1965). Any doubt in maintaining Petitioners' burden of establishing this Court's jurisdiction must be resolved against jurisdiction. *Republic Natural Gas Company* v. *State of Oklahoma*, 334 U.S. 62 (1948).

In light of these requirements, Petitioners' Petition for Certiorari is woefully inadequate. Petitioners simply have not met their burden of providing this Court with a sufficient record upon which this Court may rest jurisdiction. An insufficient Petition is reason for denying the Petition. U.S. Sup. Ct. Rule 23(4).

This Court's Rule 23 (d) states that whenever a case allegedly involves a particular statute, Petitioner must set out that statute verbatim either in the text, or in an ap-

pendix. Petitioners raise as a possible federal question the application and effect of Title 42, United States Code, Chapter 8(a), Sub-chapter 2, but nowhere do they include in the brief or appendix the entire text of that statute.

Rule 23(f) of this Court requires the Petitioners to demonstrate how and at what point of the proceedings the federal questions sought to be reviewed were raised; the method of raising them; the way they were passed upon by the lower courts; or pertinent quotations of specific portions of the record, with specific references to the record as will "show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on Writ of Certiorari". Nowhere, however, do Petitioners ever specify the particular stage in the proceedings in the Court of first instance, and in the Appellate Court, where the federal questions it seeks to review were raised. Nowhere do they demonstrate or show the method by which they raised those questions. Nowhere do they state how these questions were passed upon by the Illinois Courts. Nowhere do they provide pertinent quotations of specific portions of the record, or provide specific references where the matters appear. In sum, Petitioners have not complied with Rule 23(f) in showing this Court that a federal question was properly raised so as to give this Court jurisdiction.

Rule 23(h) of this Court requires Petitioners to present "a direct and concise argument amplifying the reasons relied on for the allowance of the writ." Incredibly, Petitioners' entire argument is this:

> (h) The above facts constitute argument.

(Pet. 7) Petitioners cite no authorities or statutes relied upon; offer no explanation for the federal questions they

assert; and offer no quotations from or references to the record below.

Petitioners have the burden of showing this Court that it has jurisdiction. *Dept. of Mental Hygiene of California, supra.* One purpose of Rule 23 is to ensure that Petitioners present their arguments with accuracy, brevity, and clearness. This Petitioners have not done. Rule 23(4) states:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration *will be a sufficient reason for denying his petition.* (emphasis supplied)

Petitioners' Petition is woefully inadequate. It is unclear and it presents nothing to aid this Court to achieve an adequate understanding of the points requiring consideration. Accordingly, this failure alone is sufficient reason for this Court to deny the Petition for Certiorari.

II. NO FEDERAL QUESTION HAS BEEN NECESSARILY PRESENTED.

Petitioners invoke this Court's jurisdiction based upon §1257(3) of the Judicial Code which gives this Court jurisdiction over State Court cases in which any title, right, privilege or immunity is "specially set up or claimed under the Constitution, treaties or statutes of, . . . the United States". 28 U.S.C. §1257. For Section 1257 to be applicable, it is necessary that the federal question was duly raised in the proceedings, *Cardinale* v. *Louisiana,* 369 U.S. 437 (1969); and that the federal question upon which the State Court judgment hinges was substantial. *Zucht* v. *King,* 260 U.S. 174 (1922) It is necessary, moreover, that the federal claim was properly asserted in and rejected by the Illinois

State Court. *Huffman* v. *Pursue, Limited,* 420 U.S. 592, *reh. denied* 421 U.S. 971 (1975).

In the instant case, no federal question was presented, argued, or decided in the courts below. Petitioners cite no example and give no reference, or quotation from the record, demonstrating the proper raising of a federal question. The Illinois Appellate Court concluded that only one argument was actually presented by Petitioners.

> However, they argue only one, that the defendants' property is not "slum or blighted". The defendants conclude that the City of DeKalb lacks the right and power to condemn defendants' real property.

(Pet. A. 3) Thus, the only question before the Appellate Court was whether the fact that property is allegedly not "slum or blighted" is a defense to a condemnation proceeding in an urban renewal project. Because the city proceeded under an Illinois State statute, this question of defense is purely a state question. *Shirley* v. *Louisville and Nashville Railroad Co.,* 327 F.2d 549 (5th Cir. 1964). And that question was determined adversely to the Petitioners by the Illinois Supreme Court in *City of Chicago* v. *Barnes,* 30 Ill.2d 255, 195 N.E.2d 629 (1964), wherein that Court said:

> There is no merit in the contention. In this kind of case the fact that there may be some sound buildings in the slum and blighted area is *no defense* to the proceedings. Property may be taken which, standing by itself, is unoffending, for the test is based on the condition of the area as a whole. (emphasis supplied)

30 Ill.2d at 257. Thus, under Illinois law, the fact that Petitioners' individual property is not slum or blighted is not a defense. It is the area as a whole which is the test.

Even assuming without conceding that this was a federal question, then nevertheless the question is not substantial.

This Court already has rejected this contention of Petitioners in *Berman* v. *Parker,* 348 U.S. 26 (1954), wherein this Court said:

> Property may of course be taken for this redevelopment which, standing by itself, is innocuous and unoffending . . . It is the need of the area as a whole which Congress and its agencies are evaluating. If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrative plans for redevelopment would suffer greatly . . . Community redevelopment programs need not, by force of the Constitution, be on a piecemeal basis—lot by lot, building by building.

348 U.S. at 35. Whether defendants' property is "blighted" or "slum", therefore, is not even relevant. It is the whole redevelopment area which bears scrutiny. Petitioners never perceived this point. It is not a federal constitutional point; it is not a substantial federal question.

Although only one argument was made before the lower Illinois Court, Petitioners now attempt to present three "federal" questions. *First,* Petitioners question whether the pleadings, and the applicable municipal resolutions, fulfill the federal guarantees of substantive and procedural due process, and equal protection. (Pet. 3, 4) In sum, Petitioners are arguing that the pleadings and resolutions were insufficient. Even if they were (and we deny that they were), this again would be purely a matter of state law. The sufficiency of pleadings under state law pursuant to a state statute is a state question. *Duncan* v. *Tennessee,* 405 U.S. 127 (1972) (criminal pleadings). Petitioners had the opportunity to present evidence on the sufficiency of the pleadings, to challenge the authority of the Respondent to condemn the property in question, and to challenge the

Respondent's evidence. As the Appellate Court observed, however:

> The defendants put on no evidence, they merely filed an affidavit stating the defendants' opinions and beliefs. Nowhere in that affidavit is there any allegation that the City of DeKalb is without the authority to condemn. . . It did not present any evidence that the City had abused its discretion.

(Pet. A. 4) Due Process does not guarantee Petitioners victory. It only guarantees them a full and complete hearing. Petitioners had their chance to present evidence before the Illinois trial court, but neglected to do so.

Petitioners also seem to contend that the failure of the City to attach a copy of the municipal resolution to the pleadings, or in any other way identify the "blighted area", deprived them of constitutional rights. (Pet. 4) It is clear, however, that regardless of the sufficiency of the pleadings, the resolution and the identification of the area were presented to Petitioners prior to termination of the merits; and that they had full opportunity to present evidence on the issue. (Pet. A. 4) They chose not to do so, and cannot now convert that omission into a federal question.

Second, Petitioners raise the question of the application and effect of Title 42, United States Code, Chapter 8(a), Sub-chapter 2. Nowhere, however, do Petitioners ever quote where in the record below this statute was raised; where the statute was even mentioned; how the statute is even relevant; or even provide this Court with a full text of the statute. U.S. Sup. Ct. R. 23(f). Respondent City of DeKalb proceeded under a particular division of the Illinois Municipal Code. It did not proceed under Title 42. The relevance of Title 42 is never explained by Petitioners. The burden is on Petitioners to show this Court what relevance

Title 42 has; and how and in what manner it was raised in the State Court proceedings. U.S. Sup. Ct. R. 23(f) Petitioners' failure to do so is fatal. Clearly, no federal question has been raised.

Third, Petitioners contend that division 74.2 of §11 of the Illinois Municipal Code (Ch. 24, Ill. Rev. Stat., §11-74.2) is the applicable statute in the case rather than Division 11 under which the Respondent City of DeKalb proceeded. (Pet. 5) Petitioners admit, however, that they never raised the question until eight days before oral argument before the Appellate Court. (Pet. 5)

Although Division 74.2 was on the books more than four years prior to the date of the condemnation petition was even filed (Pet. 5), Petitioners never raised the issue before the trial court, or briefed it before the Appellate Court. Illinois Supreme Court Rule 341(e) (7) (Ch. 110A, Ill. Rev. Stat. §341) states, in part, that briefs *shall* contain:

> Argument, which shall contain the contentions of Appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on . . . *points not argued are waived* and shall not be raised in the reply brief, in oral argument, or in petition for rehearing. (emphasis supplied)

Petitioners did not properly raise their contention before the Illinois Courts, and as they concede, both the Illinois Appellate Court, and the Illinois Supreme Court, ignored this point. (Pet. 5)

In addition, nowhere in their Petition do Petitioners explain to this Court how Division 74.2 is applicable, and Division 11 not applicable. No argument is made, for example, that Division 74.2 repealed, superseded, amended, or even affected Division 11. Nowhere do Petitioners even con-

tend that Division 11 is inapplicable. This is just another contention raised by Petitioners to which they offer no explanation.

This case involves no substantial federal question. Consequently, this Court has no jurisdiction, and must deny the Petition for Certiorari.

III. THE RECORD OVERWHELMINGLY SUPPORTS THE AFFIRMANCE OF A PURELY STATE COURT ACTION BY THE ILLINOIS APPELLATE COURT.

In its opinion, the Illinois Appellate Court carefully reviewed the evidence presented before the Trial Court. It scrutinized the evidence, observed that Petitioners presented no evidence on the issues of the city's authority, or the necessity for condemnation, (Pet. A. 4), and concluded that Respondent city's case complied with the standards set forth by the Illinois Supreme Court. (Pet. A. 4) Furthermore, it pointed out that Petitioners had waived the issue of just compensation. (Pet. A. 3) It is clear, therefore, that the evidence supports the Trial Court judgment as affirmed by the Illinois Appellate Court.

The question of the city's appropriation of Petitioners' private property for public purposes is one primarily and exclusively for the state to determine. *Madisonville Traction Company* v. *St. Bernard Mining Company,* 196 U.S. 239 (1905). This Court has long recognized that as a general proposition, it is for the state, primarily and exclusively, to:

> Declare for what local public purposes private property within its limits may be taken upon compensation to the owner, as well as to prescribe a mode in which it may be condemned and taken.

Madisonville Traction Company, 196 U.S. at 252. In the instant case, Respondent City of DeKalb condemned Petitioners' property under the authority granted the city by Section 11 of the Illinois Municipal Code. It presented its evidence in compliance with applicable Illinois Supreme Court standards. For whatever the reason, Petitioners introduced no evidence challenging the authority of the city to condemn, or the city's determination that Petitioners' property was necessary for urban renewal purposes.

This Court recognizes that the existence of independent, adequate state grounds is sufficient reason to decline review. *Henry* v. *Mississippi,* 379 U.S. 443 (1965). The Illinois Trial Court and Appellate Court did not decide any federal questions. Instead, they decided a question of eminent domain which is well within traditional and highly orthodox state prerogative.

The tactics and strategy of Petitioners are painfully apparent. Because they failed to convince the State Court, they now for the first time attempt to elevate the state issues to federal constitutional proportions, and even raise a few questions for the first time, in order to obtain still another review. These efforts are neither within the letter nor the spirit of the principles governing Petitions for Writs of Certiorari, and accordingly, this Petition should be dismissed.

CONCLUSION

Petitioners seek to obtain this Court's involvement in an eminent domain question of a local nature, within traditional state government prerogatives, and well within the Illinois State Court's sole jurisdiction. The Petition, however,

fails to reveal the existence of any substantial federal question. Without such a question, this Court has no jurisdiction. The Petition, moreover, is woefully inadequate. This Court has been given no reason to issue the Writ.

Petitioners have received a fair trial and meticulous appellate consideration of their appeal. Respondent City of DeKalb urges this Court, therefore, to dismiss the Petition for lack of jurisdiction, or in the alternative, to dismiss the Petition.

Respectfully submitted,

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